

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SECURITAS CRITICAL INFRASTRUCTURE
SERVICES, INC.

Employer

and

Case 18-RC-120181

UNITED SECURITY PROFESSIONALS,
LOCAL 2

Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

¹Although we find this a close case on the authority to responsibly direct, we deny review. It was Employer's burden to show the use of judgment in carrying out Employer's "battle plan" in the event of emergency. Although testimony was given about some of the variables in such a situation, e.g., number, direction, and location of attacking forces, no examples were given of how a lieutenant would have to make decisions based on the same, not even to the extent of general examples of choices from among different fire and movement, force protection, or other security tactics that would not have revealed the details of the Employer's contingency planning. Although a reasonable assumption exists that a lieutenant might have to apply judgment in such situations, assumptions are not evidence, especially not exemplars of judgment and discretion needed to show section 2(11) status under *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006). See, e.g., *Barstow Community Hospital*, 352 NLRB 1052, 1053 (2008), affirmed by 356 NLRB No. 15 (2010), enfd. 474 Fed.Appx. 497 (9th Cir. 2012) (unpublished opinion) (evidence lacked sufficient specificity to show the employees exercised independent judgment, as it was "devoid of any examples or details of circumstances"). To the extent the Employer felt constrained from entering such evidence into the record, we note that there are procedures for protective orders in Board proceedings that extend to documents and testimony. *Overnite Transportation Co.*, 329 NLRB 990, 997 (1999) (Board continues protective order in combined unfair labor practice and election case regarding certain testimony and sealed exhibits); *NFL Management Council*, 309 NLRB 78, 88 (1992) (Board continues in force protective order covering certain exhibits and in camera testimony); *Pepsi-Cola*, 307 NLRB 1378, 1379 fn. 1 (1992) (judge issued an agreed-to protective order placing excerpts from the employer's security manual under seal and requiring the documents be returned to the employer at the end of the proceedings).

Member Miscimarra would grant review of the Regional Director's determination that the Employer's lieutenants lack authority to responsibly direct its security officers. For example, the lieutenants are the designated "response team leaders" in the event of terrorist attacks on the nuclear power plant where they work, which appears to include sufficient discretion to warrant

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

HARRY I. JOHNSON, III, MEMBER

Dated, Washington D.C., April 4, 2014

reviewing the record to determine whether they are statutory supervisors. See *Oakwood*, supra, 348 NLRB at 693. As to accountability, the Employer states that the record indicates that lieutenants are subject to discipline if they do not properly direct security officers. See *Community Educations Centers, Inc.*, 360 NLRB No. 17, slip op. at 2 (2014) (Member Miscimarra, concurring in part and dissenting in part).